

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DENNIS FRAZIER,  
Appellant,  
vs.  
UNITED STATES OF AMERICA,  
APPELLEE.

FILED

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

APPELLANT'S OPENING BRIEF

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No. 22784

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## TOPICAL INDEX

	<u>page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTIONAL FACTS	1
STATEMENT OF THE CASE	2
QUESTIONS INVOLVED	4
RESUME OF PERTINENT EVIDENCE	5
SPECIFICATION OF ERRORS	14
SUMMARY OF ARGUMENT	15
ARGUMENT	
I Appellant's privilege against self incrimination guaranteed by the Fifth Amendment was violated by reason of his conviction for failure to comply with the requirements of the Marihuana Tax System.	20
II The conviction of appellant was obtained by impermissible entrapment as a matter of law in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.	27
III The trial court committed plain error when it gave misleading and prejudicially erroneous instructions to the jury as to the quantum of proof of the defense of illegal entrapment. Further, whether the police conduct fell below standards, and thus was an improper use of government power, and is a question for the court, and not the jury, and submission of the question to the jury resulted in appel- lant being deprived of his liberty without due process of law.	43
IV The unreasonable delay between the offense and the arrest prejudiced appellant's ability to defend himself and was a violation of due process thus violating rights guaranteed by the Fifth Amendment.	49
CONCLUSION	55
CERTIFICATION AND PROOF OF SERVICE	57
EXHIBITS	iv
APPENDIX	v



TABLE OF AUTHORITIES

pages

Cases

ALBERTSON V. SUBVERSIVE ACTIVITIES CONTROL BOARD 182 US 70, 15 L Ed 2d 165, 86 S Ct 194 (1965)	15-24
BUTTS V. UNITED STATES, CA8th, 1921, 273 F. 38	30
GROSSO V. UNITED STATES, _____US_____, 19 L Ed 2d 906, 88 S Ct _____ (1968)	15-24-25-26-27
HAYNES V. UNITED STATES, _____US_____, 19 L Ed 2d 923, 88 S Ct _____ (1968)	15-24
McNABB V. UNITED STATES, 318 US 332, 63 S Ct 608, 87 L Ed 819, (1943)	46-47
MARCHETTI V. UNITED STATES, _____US_____, 19 L Ed 2d 889, 88 S Ct _____, (1968)	15-24
MASCIALE V. UNITED STATES, 356 US 386, 2 L Ed 2d 859, 78 S Ct 827	47
MATYSEK V. UNITED STATES, CA9th, 1963, 321 F.2d 246	31-41-42
NEWMAN V. UNITED STATES, CA4th, 1964, 299 Fed. 131	30-31
NEWSOM V. UNITED STATES, CA5th, 1964, 335 F.2d 237	33
NOTARO V. UNITED STATES, CA9th, 1966, 363 F.2d 169	17-44-45
ROBISON V. UNITED STATES, CA9th, 1967, 379 F.2d 338	17-18-45-46-47-49
ROSS V. UNITED STATES, CDC, 1965, 349 F.2d 210	19-50-53
SHERMAN V. UNITED STATES, 356 US 369, 2 L Ed 2d 848, 78 S Ct 819, (1958)	16-31-32-47
SORRELLS V. UNITED STATES, 287 US 435, 53 S Ct 210, 77 L Ed 413, 86 ALR 249 (1932)	28-29-30-31-41-42
UNITED STATES V. PUGLIESE, CA2d, 1965, 379 F.2d 338	45



1	WHITING V. UNITED STATES, CA1st, 1963, 321 F.2d 72	48
2	WOO WAI V. UNITED STATES, CA9th, 1915, 223 F. 412	27-28
3		
4	WOODY V. UNITED STATES, CDC, 1966 370 F.2d 214	50-51-53-54
5		

STATUTES

7	18 United States Code Sec.3231	1
8	21 United States Code Sec.176(a)	1-2
9	26 United States Code Sec.4741 through 4775	-20-15-2-1 22-21-
10		
11	28 United States Code Sec.1254(3)	47-49
12	28 United States Code Sec.1291	2
13		

RULES AND REGULATIONS

15	Fed. Rules of Crim.Proc.:	
	Rule 29	3
16	Rule 48(b)	49
17	Federal Tax Regulations:	22
	#152.66 (Form 679a Marihuana)	
18	#152.69	
19	#152.62	

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DENNIS FRAZIER, )  
 )  
 Appellant, )  
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 vs. )  
 )  
 UNITED STATES OF AMERICA, )  
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 Appellee. )  
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APPELLANT'S OPENING BRIEF

TO THE CHIEF JUDGE OF THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT, AND TO THE ASSOCIATE JUSTICES  
THEREOF, AND TO EACH OF THEM:

STATEMENT OF JURISDICTIONAL FACTS

The indictment herein charged violations of Title  
21, United States Code, Section 176(a) and Title 26,  
United States Code, Section 4742(a), in three counts,  
offenses against the United States.

Under Title 18, United States Code, Section 3231,  
the United States District Court had original jurisdiction.

Upon the jury's verdict of guilty, appellant was  
sentenced.

It is conceded that this court has jurisdiction



1 over appeals from such final decisions of a district court  
2 under the provisions of Title 28, United States Code,  
3 Section 1291.

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STATEMENT OF THE CASE

The indictment charged one transaction involv-  
ing three counts, on or about June 28, 1967, in Los  
Angeles County within the Central District of California.

Count One charged appellant with a violation of  
Title 21 United States Code Section 176(a), <sup>1/</sup> (receiving,  
concealing, and facilitating the transportation and con-  
cealment of 4,025.700 grams of Marihuana). (R.2) <sup>2/</sup>

Count Two charged a further violation of Section  
176(a), (selling to Agent Roger Knapp said Marihuana). (R.3)

Count Three charged appellant with a violation of  
Title 26 United States Code Section 4742(a), (transferring  
said Marihuana without obtaining the U.S. Treasury order  
form). (R.4 )

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<sup>1/</sup> Statutes, Rules, Texts and Instructions, or pertinent  
parts thereof, not otherwise quoted in the body of the  
brief, the Record on Appeal, or the Transcript of Testi-  
mony, are set out in the Appendix attached.

<sup>2/</sup> "R" as used herein refers to the Record on Appeal.

"T" as used herein refers to the Transcript of Testimony of  
the proceedings of December 5-6, 1967 and January 8, 1968.



1 Appellant was arraigned on the indictment October  
2 23, 1967, and plead not guilty. (R.5)

3 On December 5, 1967, before the Honorable Irving  
4 Hill, United States District Judge, jury trial commenced.  
5 (R.15)

6 On December 6, 1967, appellant was found guilty  
7 as charged in the indictment. (R.16)

8 Appellant made a motion for judgment of acquittal  
9 notwithstanding the jury verdict, under Rule 29, Federal  
10 Rules of Criminal Procedure. The motion was denied. (R.16)

11 On January 8, 1968, appellant was sentenced to  
12 imprisonment for a term of five years. (R.18)

13 Bond on appeal was set at \$2,000 personal surety.  
14 (R.18)

15 Notice of appeal was filed on January 15, 1968.  
16 (R.20)

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QUESTIONS INVOLVED

I. Are the requirements of the Marihuana Tax System part of an interrelated statutory system for taxing illegal transfers of marihuana, and is an obvious purpose of this statutory system to coerce evidence from persons engaged in illegal activities for use in their prosecution?

Would the requirements have provided information incriminating to appellant had he complied therewith thus violating his constitutional privilege against self-incrimination, and, if it would have done so, would appellant have been otherwise prevented from asserting the constitutional privilege?

II. Does the evidence show, as a matter of law, that the appellant was the victim of impermissible entrapment?

III. Were the appellant's rights prejudiced when the Trial Court gave confusing and misleading instructions to the jury as to the quantum of proof required to establish illegal entrapment?

Is the question of police conduct falling below standards, and thus an improper use of government power, one for the court or the jury, and if for the court, was appellant deprived of his liberty without due process?



1 IV. Was the delay in apprising appellant of the charges  
2 against him unreasonable and prejudicial in its  
3 effect on his ability to defend himself against the  
4 charges, and was this delay so oppressive as to  
5 constitute a denial of due process?  
6

7 - - - - -  
8 RESUME OF PERTINENT EVIDENCE  
9

10 ROGER KNAPP, United States Treasury Agent, Federal  
11 Bureau of Narcotics, testified for the Government that  
12 on or about the evening of June 10, 1967, he met appel-  
13 lant at a social gathering at appellant's residence, and  
14 that during the evening he talked briefly with appellant.  
15 (T.52-53) The prosecutor asked Agent Knapp:

16 "Q. When you talked with Mr. Frazier  
17 who else was present that, say, was part of  
18 the conversation or might have heard what  
19 was said?

20 A. A Mr. Craig Lasha." (T.53)

21 Agent Knapp testified further:

22 "A. There was a brief conversation. In  
23 essence, I asked Mr. Frazier if he could  
24 purchase some narcotics for me. He claimed  
25 he could. I then asked for his telephone  
26 number.....I told him I would contact him  
later." (T.54) (EMPHASIS OURS THROUGHOUT RESUME)



1 Further testimony from Agent Knapp:

2 "A. On June the 26th I made a telephone call"..(T.5  
3 (established that it was appellant)

4 Then I asked him if I could purchase about  
5 5 kilograms of marijuana from him. He said  
6 he thought he could get them, but he would  
7 have to make a few phone calls. We then agreed  
8 that I would call him back on the 28th to make  
9 more definite arrangements. (T.55)

10 Q. Did you then, on the 28th, call back Mr.  
11 Frazier?

12 A. Yes, I did." (T.55)

13 (established it was appellant)

14 "A. I then asked him if I could purchase the  
15 marijuana from him tonight. He said it was  
16 ready. And then we agreed that I should drive  
17 to his residence...."

18 (continuing)

19 A....I drove to his residence...

20 (continuing)

21 A....we had a brief conversation through  
22 the passenger side window of my car.

23 Q. Was there anyone else present beside  
24 yourself and Mr. Frazier?

25 A. No, there wasn't." (T.56)

26 The testimony continued, stating that after a



1 half hour at the residence, appellant and Agent Knapp  
2 drove in appellant's car to an intersection and parked;  
3 that appellant walked out of sight; that a few minutes  
4 later he returned, and in Agent Knapp's own words;

5 "And he said that the source of supply  
6 did not want to meet me." (T.57)

7 Knapp testified that during the conversation, a  
8 Young Male Negro (hereinafter also referred to as Mister X)  
9 walked past, got into the driver's seat of a blue car  
10 parked in front of them. (T.57) Knapp stated:

11 "I gave (Frazier) \$520 of previously  
12 recorded Government money." (T.58)

13 Agent Knapp testified that appellant got in the  
14 passenger side of the blue car with Mister X and drove out  
15 of sight, later returning; appellant got out of the car  
16 carrying a brown bag which he put behind the seat of his  
17 own car, got in, and drove back to his residence. (T.58-59)  
18 Knapp stated:

19 "I inspected the contents of the bag..."

20 "I then took the bag out of the car and walked  
21 across the street and put it in the Government  
22 car...and locked the car."

23 "Mr. Frazier and I then went into his house.

24 And we discussed the possibility of my pur-

25 chasing approximately forty or more kilograms

26 of marijuana from him at a future date." (T.59)



1           Objection by defense counsel that "purchase at a  
2 future date" was not within the indictment was overruled  
3 by the Court.."contemporaneous transaction".. "part of  
4 the res gestae." (T.59) Then the Court asked Agent Knapp:

5           "Who else was present inside the house  
6 during this conversation?

7           WITNESS: I don't believe anyone was,  
8 Your Honor." (T.59-60)

9           The prosecutor then queried Agent Knapp:

10          "Q. Was there any other mention regarding  
11 the transaction that had just been completed?

12          A. Only that he complained that he hadn't made  
13 enough out of the transaction to justify his  
14 traveling all the way down there. And he  
15 stated that he was rather unhappy with the  
16 amount that he received." (T.60)

17          After introduction of the evidence, which by  
18 stipulation earlier (T.51) established that the five  
19 bricks of leafy material in question were identified as  
20 marijuana, the prosecutor asked the Agent:

21          "Q. Mr. Knapp, directing your attention  
22 once again to the transaction in question  
23 on the evening of the 28th, was there ever  
24 a mention or a request from Mr. Frazier for  
25 an order from you as required by the Secretary  
26 of the Treasury? I guess it is referred to



1 as a marihuana demand form.

2 A. No, there wasn't.

3 (Objection to leading the witness overruled)

4 Q. At any other time was this ever requested  
5 from Mr. Frazier?

6 A. No, it wasn't." (T.63-64)

7 - - - - -

8 On cross-examination, Agent Knapp's testimony  
9 established that on June 10th, he met appellant for the  
10 first time, that he was introduced by Craig Lasha, that  
11 Craig Lasha had brought Agent Knapp to appellant's  
12 residence (T.66), that Knapp had met Lasha previously,  
13 and when asked if Lasha were an informer, and the prose-  
14 cutor objected, the Court overruled the objection and  
15 asked Agent Knapp:

16 "What was Mr. Lasha's capacity, to the best  
17 of your knowledge?

18 WITNESS: He was cooperating with the Bureau  
19 of Narcotics.

20 COURT: But was not being paid for that  
21 service?

22 WITNESS: Not that I know of, Your Honor." (T.67)

23 Whereupon defense counsel requested that the  
24 informer, Craig Lasha, be brought into Court for con-  
25 frontation. The Court, outside the hearing of the jury,  
26 and after a thorough inquiry, ordered that, if possible,



1 Mr. Lasha be brought in.

2 The cross-examination of Agent Knapp continued in  
3 open court within the hearing of the jury. Defense counsel  
4 queried Agent Knapp:

5 "Q. Isn't it true, Mr. Knapp, that you  
6 told Mr. Frazier that your car was mal-  
7 functioning and that you had better use  
8 his car?

9 A. I may have. I don't recall." (T.74)

10 Defense counsel asked Knapp if he arrested the  
11 appellant, Knapp stating that he did.

12 "Q. And what date did you arrest him?

13 A. This was on September the 13th."

14 "Q. And the purchase happened on June the  
15 28th, 1967?

16 A. That is correct." (T.75)

17 Defense counsel made a motion to dismiss because  
18 of the delay between the offense and the arrest, which  
19 was denied by the court. (T.76)

20 Defense counsel asked Agent Knapp if he knew to  
21 whom the blue car, driven by Mister X, belonged, to  
22 which Knapp replied:

23 "I believe inquiries were made. I don't  
24 recall the results.

25 Q. Would it refresh your memory if you  
26 could look at the report that you made out



1 at the time of the events?

2 A. Possibly.

3 DEFENSE COUNSEL: Your Honor, may I ask the  
4 United States Attorney now to show Mr. Knapp  
5 the particular report which is in his files?  
6 (Court query)

7 PROSECUTOR: The agents' reports are here,  
8 Your Honor.

9 COURT: Very well. Turn them over, pursuant  
10 to the Jencks Act." (T.78)

11 (After reading the report, Agent Knapp's cross-  
12 examination resumed.)

13 "Q. And it belonged to whom?

14 A. I believe it said there Cynthia  
15 Hester. It is difficult to read."

16 "Q. Did you find out who the young  
17 Negro male was?

18 A. No, I didn't." (T.78)

19 - - - - -

20 On re-direct, the prosecutor queried Agent Knapp  
21 again as to why the Agent remained alone in the car, why  
22 he didn't go along? And again Agent Knapp answered:

23 "A. Mr. Frazier told me that the unidenti-  
24 fied male did not want to meet me." (T.82)

25 - - - - -



1 CHARLES R. HENRY, United States Treasury Agent,  
2 Federal Bureau of Narcotics, testified that he was one  
3 of several surveillance agents who followed Agent Knapp  
4 to appellant's residence on June 28, 1967. (T.87)

5 Agent Henry testified that he saw Knapp and the  
6 appellant go into appellant's residence, come out later,  
7 drive off together in appellant's car; that he saw them  
8 park at an intersection, that he saw appellant go into  
9 an apartment complex; that he later saw appellant in  
10 apparent conversation with Knapp; a blue car was parked  
11 in front of appellant's; that he saw appellant get into  
12 the blue car with an unidentified person, Negro male,  
13 and they drove away. (T.88-89)

14 He further testified that the pair returned; that  
15 he observed appellant get out of the car with a paper bag,  
16 return to his own car, place the bag in the car, then he  
17 got in with Knapp and returned to the residence; that he  
18 observed Knapp and appellant go into the residence, and  
19 later Knapp came out, got into the government car, and  
20 met with the surveillance agents. (T.90-91)

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22 On cross-examination, Agent Henry was queried as  
23 to appellant's walking to a nearby gas station to pick up  
24 a tire for his car, and after the Court intervened, Agent  
25 Henry was able to recall that he did observe the appellant  
26 pick up a tire. (T.92-93)



1 Queried as to the young male Negro, Agent Henry  
2 testified that he saw him, that he did not know who he  
3 was. (T.94-95) When asked by defense counsel if he tried  
4 to find out the identify, of this specific Negro male,  
5 Agent Henry stated:

6 "A. In the normal procedures of investigation  
7 we attempt to identify those persons we have  
8 reason to believe were involved, sir.

9 Q. Is your answer yes or no?

10 A. Yes, sir.

11 Q. Could you state to us who he was?

12 A. No, sir.

13 Q. You mean you don't now remember that  
14 name anymore?

15 A. I never found out the name, sir." (T.96)

16 - - - - -

17 Out of the presence of the jury, the United States  
18 Attorney stated that the informer, Craig Lasha, was ready  
19 and waiting, but the Government refused to put him on as  
20 its witness; with defense counsel refusing to make Lasha  
21 his witness, Lasha did not testify. (T.99)

22 Defense counsel then brought in the defense of  
23 entrapment. (T.105)

24 The appellant did not testify, nor did he  
25 produce any witnesses.

26 - - - - -



1                                    SPECIFICATION OF ERRORS

2                                    I

3            Appellant's privilege against self-incrimination  
4 guaranteed by the Fifth Amendment to the Constitution  
5 of the United States was violated by reason of his  
6 conviction for failure to comply with the requirements  
7 of the Marihuana Tax system.

8                                    II

9            Appellant's conviction was obtained by impermissible  
10 entrapment as a matter of law in violation of the Due  
11 Process Clause of the Fifth Amendment to the Constitution  
12 of the United States.

13                                  III

14           The Trial Court committed plain error when it  
15 gave misleading and prejudicially erroneous instructions  
16 to the jury as to the quantum of proof of the defense  
17 of illegal entrapment. Further, whether the police  
18 conduct fell below standards and thus was an improper  
19 use of government power, is a question for the court,  
20 and not the jury, and submission of the question to the  
21 jury resulted in appellant being deprived of his liberty  
22 without due process of law.

23                                  IV

24           The unreasonable delay between the offense and  
25 the arrest prejudiced appellant's ability to defend  
26 himself thus violating the Due Process Clause of the  
Fifth Amendment to the Constitution of the United States.



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1 remand the case to the United States District Court for  
2 the Central District of California with directions to  
3 quash the indictment and discharge the defendant.

## 4 II

5 The evidence shows as a matter of law that ap-  
6 pellant was a victim of unlawful entrapment, and a con-  
7 viction so obtained is in violation of the Due Process  
8 Clause of the Fifth Amendment to the Constitution of the  
9 United States.

10 The principles to be followed have been establish-  
11 ed by cases cited under Argument (II) hereinafter set  
12 forth, including the United States Supreme Court decision in

13 SHERMAN V. UNITED STATES, 356 US 369,

14 2 L Ed 2d 848, 78 S Ct 819 (1958)

15 which found the criminal conduct charged against the  
16 defendant was the product of the creative activity of law  
17 enforcement officials; the Court reversed the judgment,  
18 and remanded the case to the District Court with instruc-  
19 tions to dismiss the indictment.

## 20 III

21 The Trial Court committed plain error when it  
22 gave misleading and prejudicially erroneous instructions  
23 to the jury as to the quantum of proof of the defense of  
24 illegal entrapment. Further, whether the police conduct  
25 fell below standards, and was thus an improper use of  
26 government power, is a question for the court, and not



1 the jury, and submission of the question to the jury  
2 resulted in appellant being deprived of his liberty  
3 without due process of law.

4 The instructions taken as a whole (and particular-  
5 ly on entrapment, set forth in totidem verbis under  
6 Argument (III) hereinafter), and even though the instruc-  
7 tions supposedly were taken directly from

8 NOTARO V. UNITED STATES, CA 9th, 1966  
9 363 F.2d 169

10 nevertheless erroneously imposed requirements which  
11 brought about the reversal of NOTARO in the Ninth Cir-  
12 cuit decision, stating that it was reasonably probable  
13 that the jurors were confused by the instructions, that,  
14 even though the jury was properly informed, in a general  
15 instruction, as to the burden of proof which rested upon  
16 the prosecution, nonetheless the possibility that there  
17 was confusion or misunderstanding was strengthened, not  
18 eliminated, by a view of the instructions as a whole.

19 Had the court followed the instructions given in  
20 the Ninth Circuit case of

21 ROBISON V. UNITED STATES, CA 9th, 1967  
22 379 F.2d 338

23 and made it quite clear, advising the jury again and again  
24 of the prosecution's burden of proving appellant's guilt  
25 beyond a reasonable doubt, and explaining specifically,  
26 as did ROBISON, at page 345;



1 "That burden, as I say, rests upon the  
2 Government and never shifts to the Defendant.\* \* \*  
3 The law does not impose on a Defendant the  
4 burden of producing \* \* \* any \* \* \* evidence."

5 The Ninth Circuit Court in its opinion in ROBISON  
6 took time to probe into "...this word of art - 'entrap-  
7 ment'" and to ponder anew the confusion which abounds in  
8 the doctrine, and to note with interest that the United  
9 States Supreme Court has not reassessed the doctrine nor  
10 the determination of whether it is a question for the  
11 court or the jury, on the grounds that it has not been  
12 properly in issue before the Court.

13 As indicated by the authorities cited under Argu-  
14 ment (III) hereinafter set forth, this Honorable Court  
15 should find that submission of the question of the im-  
16 proper use of government power to the jury was error,  
17 and deprived the appellant of his liberty without due  
18 process of law.

19 Therefore, the judgment of conviction should be  
20 reversed and the appellant given a new trial, with in-  
21 structions that the question of whether or not the  
22 police conduct fell below standards is one for the court,  
23 and the court alone, and never the jury.

24 IV

25 Due process was denied to the appellant when the  
26 formal charge was delayed for an unreasonable time after



1 the offense, to the prejudice of the appellant's ability  
2 to defend himself.

3 ROSS V. UNITED STATES, CDC 1965

4 349 F.2d 210

5 established the principle that a delay in apprising ap-  
6 pellant of the charge against him, and the prejudicial  
7 effect of that delay on appellant's ability to defend  
8 himself against the charge, violated the Due Process  
9 Clause of the Fifth Amendment.

10 In other cases cited in Argument (IV), *infra*, it  
11 has been established that the length of delay is not the  
12 over-riding factor, but that the crucial question is  
13 whether or not there was prejudice to the defendant's  
14 case.

15 Since the delay made it impossible for appellant  
16 to learn the identify of or the location of an eye-witness,  
17 the only witness who might have impeached the testimony  
18 of the two Agents, this constituted prejudicial delay and  
19 warrants the reversal of his conviction.

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1 two copies. When the purchaser buys the form, he is re-  
2 quired to disclose the date of sale, the name and address  
3 of the proposed vendor, the name and address of the pur-  
4 chaser, and the amount of marihuana ordered.

5 Title 26 USC #4742(d) is entitled PRESERVATION.  
6 The original is to be given by the purchaser to any person  
7 who shall transfer marihuana to him and shall be preserved  
8 for a period of two years so as to be READILY ACCESSIBLE  
9 FOR INSPECTION BY AN OFFICER OR EMPLOYEE MENTIONED IN  
10 SECTION 4773 (infra).

11 One copy is retained by the purchaser, with simi-  
12 lar requirements. The other copy is retained by the  
13 Internal Revenue.

14 The abovementioned copy retained by the Internal  
15 Revenue is covered under Title 26 USC #4773, which states  
16 in pertinent part:

17 "The duplicate order forms...and records required  
18 to be preserved under the provisions of 4742...shall be  
19 OPEN TO INSPECTION BY OFFICERS AND EMPLOYEES of the  
20 Treasury Department duly authorized...and such officials  
21 of any State or Territory...as shall be charged with the  
22 ENFORCEMENT OF ANY LAW...REGULATING...MARIHUANA. The  
23 Secretary or his delegate is AUTHORIZED TO FURNISH, upon  
24 written request, certified copies of any of the said  
25 statements or returns...OF ANY OFFICIAL...AS SHALL BE EN-  
26 TITLED TO INSPECT..." (Emphasis ours)



1 Federal Tax Regulations, Section 152.62 defines  
2 the scope of the tax; Section 152.66 requires every person  
3 seeking to obtain marihuana to make application on FORM  
4 679a (Marihuana)..for purchase of an order form. This appli-  
5 cation shall show (a) the transferee's name, address, and,  
6 if registered, the registration number; (b) the name and  
7 address of the transferor, and (c) a description, including  
8 quantities to be transferred.

9 Section 152.69 of the Federal Tax Regulations  
10 states that the triplicate shall be retained by the  
11 district director, preserved for 2 years, so as to be  
12 READILY ACCESSIBLE FOR INSPECTION BY ANY OFFICER, AGENT,  
13 OR EMPLOYEE MENTIONED IN SECTION 4773. (supra) (Emphasis  
14 ours)

15 Appellant was indicted by the September Grand  
16 Jury, 1967, for a violation of Title 26 Section 4742(a),  
17 unlawful transfer of Marihuana without a written order.  
18 He was arraigned, and released on \$2,000 personal surety bon  
19 pending trial as originally set for November 28, 1967.

20 Appellant received a letter, dated October 16,  
21 1967, (BEFORE TRIAL), from the United States Treasury  
22 Department, Internal Revenue Service, District Director,  
23 Los Angeles, California, Supervisor O'Donnell, Correspon-  
24 dence Unit (attached hereto as EXHIBIT ONE) and set out  
25 herewith in pertinent part:  
26



1 "Dear Mr. Frazier:

2 "This office is in receipt of a report from the  
3 Bureau of Narcotics relative to your violation of the  
4 Marihuana Tax Act.

5 "Since the records indicate that you are not  
6 registered under the Marihuana Tax Act, it is requested  
7 that you forward to this office, within the next five  
8 days, the order form required by the Act.

9 "In the event you are unable to produce the order  
10 form, you are liable for the Special Tax, Penalty, and  
11 Transfer Tax, and a bill will be sent to you for such  
12 amounts."

13 The above-quoted letter is prima facie evidence  
14 that the transfer tax, the occupational tax, and the  
15 registration requirement are parts of an interrelated  
16 statutory system for taxing illegal activities, and that  
17 an obvious purpose of this statutory system is to coerce  
18 evidence from persons engaged in illegal activities for  
19 use in their prosecution.

20 The federal statutes and penalties prescribed  
21 place the appellant entirely within an area permeated  
22 with criminal statutes, where he is inherently suspect  
23 of criminal activities.

24 The United States Supreme Court on January 29,  
25 1968, handed down three decisions, argued together,  
26 which struck down as unenforceable any statutory scheme



1 enacted by Congress to make effective taxes imposed on  
2 unlawful activities, with requirements which subject any  
3 person to a violation of the privilege against self-in-  
4 crimination.

5 MARCHETTI V. UNITED STATES, 19 L ed 2d 889

6 GROSSO V. UNITED STATES, 19 L ed 2d 906

7 HAYNES V. UNITED STATES, 19 L ed 2d 923

8 MARCHETTI and GROSSO were concerned with wagering  
9 activities, and HAYNES was concerned with statutory require-  
10 ments relating to certain firearms.

11 The Court also relied on its decision in  
12 ALBERTSON V. SUBVERSIVE ACTIVITIES CONTROL BOARD  
13 382 US 70, 15 L ed 2d 165, 86 S Ct 194 (1965)  
14 which declared unconstitutional the order of the Board  
15 that members of the Communist party must register,  
16 stating that

17 "Mere association with the Communist Party  
18 presents a sufficient threat of prosecution to  
19 support a claim of the privilege of self-  
20 incrimination."

21 In GROSSO, the Court states, at page 915:

22 "The cases before us present a statutory  
23 system condemned by ALBERTSON. The wagering  
24 excise tax, the occupation tax, and the  
25 registration requirements are only parts of  
26 an interrelated statutory system for taxing  
illegal wagers.



1 "Whatever else Congress may have meant to achieve,  
2 an obvious purpose of this statutory system  
3 clearly was to coerce evidence from persons  
4 engaged in illegal activities for use in their  
5 prosecution."

6 And the Court continues at pages 916-7 in GROSSO:  
7 "The question in these cases...is not whether  
8 all governmental programs which require citizens  
9 to expose their identity are invalid, but  
10 whether this statutory system, designed primarily  
11 for and utilized to pierce the anonymity of  
12 citizens engaged in criminal activity, is  
13 invalid." (Emphasis ours)

14 "...the risks here are obvious and real. A list  
15 of persons who comply with #4401 every month is  
16 invaluable to prosecuting authorities. It must  
17 frequently provide the clinching link in the  
18 chain of conviction.

19 "We must take this statute as it is written and  
20 as it has been applied. Both the statute and  
21 the practice under it clearly further a congres-  
22 sional purpose to gather evidence from citizens  
23 in order to secure their conviction of crime.

24 "There undoubtedly will be other statutes and  
25 practices as to which this determination will  
26 be more difficult to make.



1 "These cases, however, present a statutory  
2 system manifesting a patent violation of the  
3 privilege.

4 "That system must be dealt with uncompromising-  
5 ly to protect against encroachment of the  
6 privilege and to encourage legislative care  
7 and concern for its continuing vitality."

8 It is appellant's contention that the information  
9 required by the Marihuana Tax System is directed at a  
10 highly selective group inherently suspect of criminal ac-  
11 tivities; that the information required concerns an area  
12 permeated with criminal statutes; that the hazards of  
13 incrimination created by the requirements can only be  
14 termed real and appreciable; that the information requir-  
15 ed is likely to facilitate arrest and eventual conviction;  
16 that the information required could, to borrow a phrase  
17 from GROSSO (page 916), "start him on the road to prison,"

18 It is therefore appellant's contention that his  
19 proper claim of the privilege against self-incrimination  
20 provides a full defense to any prosecution for failure  
21 to make application for the tax transfer Form 679a(Mari-  
22 huana).

23 It is further contended that the appellant cannot  
24 be said to have waived his privilege by not asserting it  
25 in the lower court. GROSSO states in pertinent part,  
26 paragraph 11, page 909:



1 "The defendant's failure to raise in  
2 the lower courts the issue..(of his)  
3 privilege against self-incrimination is  
4 not an effective waiver of this constitu-  
5 tional privilege, where previous decisions  
6 by the United States Supreme Court had held  
7 that such a conviction did not violate the  
8 privilege."

9 Therefore, as established by these recent decisions  
10 in the Supreme Court, appellant's claim of the privilege  
11 precludes a criminal conviction premised on failure to  
12 meet the requirements of Title 26 United States Code  
13 Section 4742(a).

14 - - - - -

15 ARGUMENT

16 II

17 APPELLANT'S CONVICTION WAS OBTAINED BY  
18 IMPERMISSIBLE ENTRAPMENT AS A MATTER OF  
19 LAW IN VIOLATION OF THE DUE PROCESS CLAUSE  
20 OF THE FIFTH AMENDMENT TO THE CONSTITUTION  
21 OF THE UNITED STATES.

22 - - - - -

23 The first court to recognize the defense of entrap-  
24 ment was this Honorable Court in 1915, in the case of

25 WOO WAI V. UNITED STATES, CA 9th, 1915

26 223 F. 412

wherein it established the fundamental doctrine that



1 "...it is against public policy to sustain  
2 a conviction obtained in the manner which is  
3 disclosed by the evidence in this case...

4 "...a sound public policy can be upheld only  
5 by denying the criminality of those who are  
6 thus induced to commit acts which infringe  
7 the letter of criminal statutes."

8 Chief Justice Hughes first gave the view of the  
9 United States Supreme Court in 1932, in

10 SORRELLS V. UNITED STATES, 287 US 435,  
11 53 S Ct 210, 77 L ed 413, 86 ALR 249 (1932)

12 wherein he cited WOO WAI and gave the same emphasis that

13 "The defense is available, not in the view  
14 that the accused though guilty may go free,  
15 but that the Government cannot be permitted  
16 to contend that he is guilty of a crime where  
17 the government officials are the instigators  
18 of his conduct...

19 "...it cannot be supposed that the Congress  
20 intended that the letter of its enactment  
21 should be used to support such a gross per-  
22 version of its purpose."

23 And in a separate opinion in SORRELLS, Mr. Justice  
24 Roberts gave further grounds for the decision:

25 "The efforts of members of these forces to  
26 obtain arrests and convictions have too often  
been marked by reprehensible methods."



1 "Entrapment is the conception and planning of  
2 an offense by an officer, and his procurement  
3 of its commission by one who would not have  
4 perpetrated it except for the trickery, per-  
5 suasion, or fraud of the officer."

6 "This court...has not heretofore had occasion to  
7 determine (the doctrine's) validity, the basis  
8 on which it should rest, or the procedure to be  
9 followed when it is involved. The present case  
10 affords the opportunity to settle these matters  
11 as respects the administration of the federal  
12 criminal law.

13 "There is common agreement that where a law  
14 officer envisages a crime, plants it, and activates  
15 its commission by one not theretofore intending  
16 its perpetration, for the sole purpose of ob-  
17 taining a victim through indictment, conviction  
18 and sentence, the consummation of so revolting  
19 a plan ought not to be permitted by any self-  
20 respecting tribunal.

21 "The applicable principle is that courts must  
22 be closed to the trial of a crime instigated  
23 by the government's own agents. No other  
24 issue, no comparison of equities as between  
25 the guilty official and the guilty defendant,  
26 has any place in the enforcement of this over-



1 ruling principle of public policy."

2 The doctrine of impermissible entrapment has been  
3 enunciated in other Circuits as well. Circuit Judge San-  
4 born stated in another leading case

5 BUTTS V. UNITED STATES, CA8th, 1921

6 273 Fed. 38

7 "The first duties of the officers of the law  
8 are to prevent, not to punish crime. It is  
9 not their duty to incite to and create crime  
10 for the sole purpose of prosecuting and  
11 punishing it."

12 "...it is unconscionable, contrary to public  
13 policy, and to the established law of the land  
14 to punish a man for the commission of an offense  
15 of the like of which he had never been guilty,  
16 either in thought or in deed, and evidently  
17 never would have been guilty of, if the of-  
18 ficers of the law had not inspired, incited,  
19 persuaded, or lured him to attempt to commit it."

20 Circuit Judge Woods stated the applicable principle  
21 thusly in

22 NEWMAN V. UNITED STATES, CA4th, 1924

23 299 Fed. 131

24 "...decoys are not permissible to ensnare the  
25 innocent and law-abiding into the commission  
26 of crime. When the criminal design originates



1 not with the accused but is conceived in the  
2 mind of the government officers, and the accused  
3 is by persuasion, deceitful representation, or  
4 inducement lured into the commission of a criminal  
5 act, the government is estopped by sound  
6 public policy from prosecution therefore."

7 Further enunciation by the Ninth Circuit was given  
8 in the later case of

9 MATYSEK V. UNITED STATES, CA9th, 1963  
10 321 F.2d 246

11 in its re-statement of the principles governing the defense  
12 of entrapment:

13 "The principles which should guide a District  
14 Judge when the defense of entrapment is an issue  
15 in a criminal case are set forth in SORRELLS  
16 V. UNITED STATES (citation) and SHERMAN V.  
17 UNITED STATES (citation)."

18 SORRELLS states the principle clearly and simply:

19 "...the CONTROLLING QUESTION (is) whether  
20 the defendant is a person otherwise innocent  
21 whom the Government is seeking to punish for  
22 an alleged offense which is the product of  
23 the creative activity of its own officials."

24 (Emphasis ours)

25 SHERMAN delineates:

26 ...no evidence that petitioner himself was in the



1 trade.

2 ...no narcotics found at apartment.

3 ...no significant evidence that petitioner ever  
4 made a profit on any sale.

5 SORRELLS delineates:

6 ...instigated by the agent.

7 ...creature of his purpose.

8 ...defendant had no previous disposition to commit  
9 it but was an industrious, law-abiding citizen.

10 In the facts at bar, the Government offered no  
11 proof that the appellant was ever convicted of a prior of-  
12 fense, or that he was a user, or that he was "in the  
13 trade."

14 There was no proof that appellant's residence in-  
15 dicated in any way that Marihuana was kept there, or  
16 trafficked there, or used there.

17 There was no significant evidence offered in proof  
18 that appellant ever made a profit on any sale. There was  
19 only the uncorroborated testimony by Agent Knapp that he  
20 and appellant had a conversation about future transactions,  
21 and the law was established in

22 NEWSOM V. UNITED STATES, CA5th, 1964

23 335 F.2d 237

24 that subsequent conversations as to other marihuana cannot  
25 furnish the basis for a conviction for the sale of marihuana.

26 The facts at bar definitely establish that Agent



1 Knapp made the initial overture, that Agent Knapp created  
2 the plan to have appellant's friend, informer Craig Lasha,  
3 take Agent Knapp to the appellant's birthday party to in-  
4 troduce him as a "friend, that Agent Knapp, as delineated  
5 in the Resume of Evidence, initiated every move of the plan.

6 Throughout his testimony, he consistently used such  
7 phrases as

8 "I asked Mr. Frazier if he could purchase narcotics..

9 "I asked for his telephone number..."

10 "I told him I would contact him later..."

11 "I made a telephone call..."

12 "I asked him if I could purchase marijuana..."

13 "I would call back..."

14 "I did."

15 "I asked if I could purchase the marihuana..."

16 "I drove to his residence."

17 "I gave him the money."

18 "I took the bag out of the car..."

19 It is to be noted that there was no proof that  
20 appellant has ever been involved in any kind of criminal  
21 activity at any time in his life. Certainly the phrases  
22 used above point to the conclusion that the suggestion of  
23 appellant participating in a criminal act originated with  
24 an officer of the government.

25 Agent Knapp testified on direct that appellant drove  
26 to the destination, but on cross-examination, Agent Knapp



1 Agent Knapp was asked if he told appellant that Knapp's own  
2 car was malfunctioning and it would be better if they used  
3 Frazier's car. Knapp testified: "I may have, I don't  
4 recall." (T.74)

5 One point is obvious: appellant's car had a flat  
6 tire, and it was necessary to go to the gas station, fix  
7 the tire, return to the house, and mount it on the car  
8 before the Frazier car could be used. Fortunately, Agent  
9 Henry, in surveillance nearby, was able to recall that he  
10 saw appellant return with a tire. (T.93)

11 This, of course, constitutes another of the entrap-  
12 ment devices used by Agent Knapp - this one to bring about  
13 an element of the crime of TRANSPORTING, (i.e., tricking  
14 appellant into using his own car to transport the Marihuana.)

15 Knapp testified that when appellant returned to  
16 the car, appellant told Knapp the source of supply did not  
17 want to meet Knapp. (T.57)

18 Attached hereto as EXHIBIT TWO is a copy of Agent  
19 Knapp's report, made out on July 3, 1967, 5 days after the  
20 transaction, which states at page 2, paragraph 7:

21 "The agent told Frazier that he (Knapp)  
22 didn't want to meet the source of supply's  
23 helper."

24 Caveat: Falsus in uno, falsus in omnibus. Where  
25 the witness has occasion to correct the mistake and does  
26 NOT, then the instruction that a witness false in one thing



1 is not necessarily false in all things, is not seemly.

2 It is particularly interesting to note that Agent  
3 Knapp, during cross-examination, was given his report "to  
4 refresh his memory", AFTER the above statement was made.  
5 He read through the report before cross-examination con-  
6 tinued. (T.77)

7 Only a few minutes later, the prosecutor, on re-  
8 direct, asked ONLY ONE QUESTION - why Agent Knapp remained  
9 in the car alone and did not go with appellant and Mister  
10 X; and again... Agent Knapp stated:

11 "Mr. Frazier told me that the unidentified  
12 male did not want to meet me." (T.82)

13 Yet only minutes before, Agent Knapp read in his  
14 own report that he told Frazier he did not want to meet  
15 the source of supply's helper.

16 Again, entrapment by tricks to cover other elements  
17 of the crimes of "sale" and "possession", thus to establish  
18 the "presumption of guilt". In this manner, appellant was  
19 required to TAKE THE MONEY from the agent and give it to  
20 the Young Negro Male; appellant was thus required to  
21 BRING THE MARIHUANA from the Young Negro Male to Agent Knapp.  
22 Had Agent Knapp accompanied them, appellant would NOT have  
23 handled the money NOR the marihuana, thus not violating  
24 the elements necessary to "selling", "possession", "trans-  
25 ferring", etc.

26 It is certainly to be noted that both the Agents



1 testified appellant put the brown bag in the car (in other  
2 words, there was no PERSONAL transfer from appellant to  
3 Knapp), and when they returned to appellant's residence,  
4 Knapp testified that "I inspected the contents....I took  
5 the bag out of the car, walked across the street and put it  
6 in the Government car..." (T.59)

7 It would appear that Agent Knapp possibly slipped  
8 up in his plan of establishing the important element of  
9 TRANSFERRING, which would then make the necessary transfer  
10 form unnecessary as far as appellant is concerned. And  
11 Agent Henry returned to the residence apparently too late  
12 to serve as corroboration for this element.

13 Agent Knapp' stated there was some conversation  
14 about future purchases, overheard by no one else,  
15 that appellant complained he hadn't made enough to justify  
16 the trip. (T.60)

17 This was added, undoubtedly, to further entrap  
18 appellant by establishing that appellant was "in the  
19 business of" dealing in illegal Marihuana.

20 It is worthy of note that the money given by  
21 Agent Knapp to appellant to give to the source, was  
22 "previously recorded" government money. (T.58) Agent  
23 Knapp never saw appellant receive any "share" of the money,  
24 nor did he show Knapp any money he might have received,  
25 nor did Agent Knapp have appellant arrested with the  
26 recorded money on him.



1        Instead, Agent Knapp left the residence on June  
2 28th, and appellant was arrested THREE MONTHS LATER on  
3 September 13th.

4        It should constantly be kept in mind that the of-  
5 fenses here are related to MARIHUANA, and NOT narcotics.  
6 Even the Trial Judge, in his instructions, used the term  
7 "to purchase narcotics -- marijuāna in this case" which  
8 in itself IMPLIES that marihuana is a narcotic. (T.157)

9        The serious difference of being involved with  
10 dangerous and addictive drugs (i.e., Narcotics), and the  
11 non-addictive weed (i.e., Marihuana) is an element that  
12 too often gets lost in the minds of jurors and others,  
13 particularly when AGENTS of the Federal Bureau of NARCOTICS  
14 testify, using the word "narcotics" as if that is what  
15 the accused were involved with - a dangerous and addictive  
16 drug - as opposed to "Marihuana" - a non-dangerous and  
17 non-addictive drug. As did Agent Knapp testify at the  
18 very outset of the trial -

19        "I asked Mr. Frazier if he could purchase  
20 some narcotics for me." (T.54)

21        The offenses charged against the appellant are con-  
22 cerned only with MARIHUANA, a non-addictive, non-dangerous  
23 WEED.

24        This is brought to this Honorable Court's atten-  
25 tion to further heighten the plight of persons accused of  
26 crimes, whose fundamental rights too often are ignored,



1 and who very often find their liberty at stake with jurors  
2 who are apparently expected to be experts on narcotics and  
3 marihuana, and who are expected by the learned and erudite  
4 judiciary to take enormously complicated instructions and  
5 apply them as if their mental capacities were as legally  
6 flexible as those of the judge who pronounced them.

7 Yet, this same judiciary will take unusual time  
8 to explain words in the instructions such as the following  
9 at T.153:

10 "Let me define 'concealment'. To conceal, as  
11 you would expect, means to hide or keep from  
12 sight or view."

13 "'Unlawfully' means contrary to law."

14 Honorable Court, this is not to swat at gnats, but  
15 to suggest that it would be far more important to apprise  
16 the jurors of the meaning of "Narcotics" as opposed to  
17 "Marihuana"; as to the meaning of "Dangerous Drugs" as  
18 opposed to "Marihuana"; as to the meaning of "Addictive  
19 Drugs" as opposed to "Marihuana".

20 Bringing to justice those who would help bring  
21 about the ADDICTION of persons to DANGEROUS DRUGS more  
22 properly should be the focus of a Federal Bureau entitled  
23 NARCOTICS; and the tremendous amount of the taxpayers'  
24 money spent on "buys" and manpower should more properly  
25 be relegated to curb the evils of DANGEROUS DRUGS, in-  
26 stead of spending thousands of dollars to entrap an in-  
nocent, law-abiding citizen into helping get a friend



1 (Agent Knapp) some "pot".

2 Any teen-ager, college student, young adult, and  
3 most anyone else, can at any time, in any area, get "pot".  
4 It does not take the United States Treasury Agents, Fed-  
5 eral Bureau of Narcotics, to find "pot".

6 It would help, however, if the United States  
7 Treasury Agents, Federal Bureau of Narcotics, would find  
8 the sources of the "hard stuff". This IS difficult, this  
9 is COSTLY, and this is appropriate to a Bureau of NARCOTICS.

10 The informer, Craig Lasha, was not listed as a  
11 Government witness on the trial memorandum. At the trial,  
12 defense counsel, learning for the first time who the in-  
13 former was, asked for Lasha to appear. The court ordered  
14 Lasha in, but the Government refused to put him on as  
15 their witness, thus putting defense counsel in the posi-  
16 tion of either making Lasha his own witness, or not using  
17 him at all.

18 According to Agent Knapp's testimony, Lasha was  
19 present at the INITIAL CONTACT, on June 10th. Therefore,  
20 Lasha's testimony would have established one of two  
21 things: EITHER that a government official was the insti-  
22 gator and appellant was tricked into being an "unwary  
23 criminal", OR that the governmental official was not the  
24 instigator and appellant was a "wary criminal".

25 Since Lasha's identification and "cooperative"  
26 status had been established as a matter of public record,



1 the Government's refusal to put him on as its witness,  
2 thus allowing defense counsel the right of cross-examina-  
3 tion, logically can mean only one thing: the Government  
4 knew Lasha's testimony would establish that the plan was  
5 conceived by a government official, and that the appellant  
6 was the victim of impermissible conduct by that govern-  
7 ment official.

8       This is entrapment as a matter of law.

9       In the facts at bar, the Government offered no  
10 proof that the defendant had ever had any previous dis-  
11 position to commit any crime, and offered no proof that  
12 he was anything but an industrious, law-abiding citizen.  
13 At the proceedings on January 8, 1968, T.172 and particu-  
14 larly at T.176, it is definitely established that appellant  
15 is an industrious, law-abiding citizen, who has a respon-  
16 sible job, a young wife who was pregnant with their first  
17 child (on April 11, 1968, they became parents of a 10-lb.  
18 6-oz. baby girl); also, the Government made no protest to  
19 the requirements of an appeal bond. It is certainly in-  
20 dicated that appellant was not considered to be "in the  
21 trade", and there was no indication from the Government  
22 that appellant was PRONE TO CRIME.

23       Instead, it is contended the testimony established  
24 that appellant was deliberately entrapped into each of  
25 the elements which constitute the crimes charged in the  
26 Grand Jury indictment:



1 ...tricked into making contact

2 ...tricked into using his car

3 ...tricked into going to the source

4 ...tricked into taking the money to the source

5 ...tricked into transferring the Marihuana

6 Thus we have all of the elements of the code

7 sections violated: receiving, transporting, concealing,  
8 selling, facilitating, possessing, and transferring.

9 And now the United States Treasury Department,  
10 Internal Revenue Service, as per the letter in EXHIBIT  
11 TWO, is trying to

12 ...trick him into paying Special Taxes,

13 Penalties, and Transfer Taxes.

14 To quote again from the sound reasoning of  
15 SORRELLS V. UNITED STATES (supra):

16 "Thus the Government plays on the weaknesses  
17 of an innocent party and beguiles him into  
18 committing crimes which he otherwise would  
19 not have attempted. Law enforcement does  
20 not require methods such as this."

21 Ninth Circuit Judge Weigel, in MATYSEK V. UNITED  
22 STATES, supra, pointed to the evils of the ugly pattern  
23 arising under enforcement of the law:

24 "In cases such as this, the law compels us,  
25 it seems to me, to become part of a process  
26 of futile nibbling at the outermost fringes



1 of the real evils and to condone methods  
2 of obtaining evidence which have no  
3 virtue save effectiveness."

4 These METHODS were referred to by Mr. Justice  
5 Roberts in SORRELLS (supra) as "reprehensible", and he  
6 pithily remarked further:

7 "Public policy forbids such sacrifice  
8 of decency."

9 The appellant contends that judgment and sentence  
10 were imposed on him in violation of the public policy  
11 which prohibits such convictions as a result of imper-  
12 missible entrapment; that as J. Roberts of the Supreme  
13 Court of the land stated:

14 "Courts must be closed to the trial of a  
15 crime instigated by the government's own  
16 agents."

17 "No other issue...has any place in the  
18 enforcement of this overruling principle  
19 of public policy."

20 "The judgment should be reversed and the  
21 cause remanded to the District Court with  
22 instructions to quash the indictment and  
23 discharge the defendant."

24 (SORRELLS V. UNITED STATES, 77 L.Ed.413,  
25 426; 287 US 435, 53 S Ct 210, 86 ALR 249,  
26 1932.)



## III

THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT GAVE MISLEADING AND PREJUDICIALLY ERRONEOUS INSTRUCTIONS TO THE JURY AS TO THE QUANTUM OF PROOF OF THE DEFENSE OF ILLEGAL ENTRAPMENT. FURTHER, WHETHER THE POLICE CONDUCT FELL BELOW STANDARDS AND THUS WAS AN IMPROPER USE OF GOVERNMENT POWER, IS A QUESTION FOR THE COURT, AND NOT THE JURY, AND SUBMISSION OF THE QUESTION TO THE JURY RESULTED IN APPELLANT BEING DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW.

- - - - -

The court gave the following instructions on entrapment, set out here in totidem verbis: (T.156-7-8)

"Now, there has been raised the issue of entrapment. And let me give you an instruction on that point.

"The law recognizes two kinds of entrapment: unlawful entrapment and lawful entrapment. Where a person has no previous intent to violate the law, but is induced or persuaded by law enforcement officers to commit a crime, he is entitled to the defense of unlawful entrapment, because the law as a matter of policy forbids a conviction in such a case.

"On the other hand, where a person has the readiness and the willingness to break the law, the mere fact that Government agents provide what appears to be a favorable opportunity is no defense, but is lawful entrapment. When, for example, the Government has reasonable grounds for believing that a person is engaged in the illicit sale of marijuana, it is not unlawful entrapment



1 for a Government agent to pretend to be someone else and  
2 to offer, either directly or indirectly, to purchase nar-  
3 cotics -- marijuana in this case -- from the suspected  
4 person.

5 "If, then, the jury should find beyond a reason-  
6 able doubt from the evidence in the case that before any-  
7 thing at all occurred respecting the alleged offense or  
8 offenses involved in this case, if the jury should find  
9 that the accused was ready and willing to commit the crime  
10 such as charged in the indictment, whenever opportunity  
11 was offered, and that the Government agents did no more  
12 than offer an opportunity, the accused is not entitled to  
13 the defense of unlawful entrapment.

14 "If the accused had no previous interest or  
15 purpose to commit any offense of the character here charged,  
16 and did so only because he was induced or persuaded by some  
17 agent of the Government, then the defense of unlawful entrap-  
18 mend is a just defense and the jury should acquit the  
19 defendant.

20 "In this regard, if the jury should have any  
21 reasonable doubt from the evidence in the case as to  
22 whether the defendant was the victim of an unlawful entrap-  
23 ment, the jury should acquit the accused."

24 This Honorable Court in

25 NOTARO V. UNITED STATES, CA9th, 1966

26 363 F.2d 169

enunciated with marked clarity, and with the most reliable



1 authority the dangers involved in the instructions to be  
2 given with reference to the defense of entrapment. Quoting  
3 from page 175:

4 "When a party has the burden of proof as to a  
5 factual issue, it cannot be proper that instruc-  
6 tions pertaining to the issue are so vague or  
7 ambiguous as to permit of misinterpretation by  
8 the jury of the standard which is to be applied.  
9 The desire of a careful judge to avoid language  
10 which to him may seem unnecessarily repetitive  
11 should yield to the paramount requirement  
12 that the jury in a criminal case be guided  
13 by instructions framed in language which is  
14 unmistakably clear."

15 On page 176, the reader is referred to footnote 7,  
16 the Court remarking on

17 UNITED STATES V. PUGLIESE, CA2d, 1965  
18 346 F.2d 861

19 "...wherein appears criticism of jury instruc-  
20 tions which undertook, as did the instructions  
21 in the case at bar, to distinguish between  
22 'lawful entrapment' and 'unlawful entrapment'."

23 A more appropriate and less confusing term,  
24 "impermissible entrapment", was used by the Ninth Circuit  
25 in the case of

26 ROBISON V. UNITED STATES, CA9th, 1967  
379 F.2d 338



1 The Court in ROBISON stated at page 345 that use  
2 of the words "lawful" and "unlawful" were not improper  
3 IN THIS CASE (i.e., ROBISON) since the other instructions  
4 properly advised the jury of the burden-of-proof standard  
5 to be applied. Nevertheless, the Court went on to dis-  
6 cuss the heart of the matter:

7 "...the term 'entrapment' has become a  
8 word of art...

9 "...this word of art--'entrapment'--embodies  
10 one of the most confusing concepts in the  
11 law."

12 "If the entrapment concept is demonstrably  
13 confusing to judges and lawyers, then  
14 a multo fortiori it must be confusing to  
15 laymen on the jury." (at page 346)

16 This Ninth Circuit opinion continues at  
17 page 346:

18 "We think it requires but little reflection  
19 to convince that the difficulties in giving  
20 effect to the public policy upon which the  
21 mis-called 'defense' of entrapment is based  
22 would lessen considerably, if the matter were  
23 withdrawn as a fact question for the jury and  
24 consigned to the 'supervisory authority over  
25 the administration of criminal justice in  
26 the federal courts.' (See MCNABB V. UNITED



1 STATES, 318 US 332,341, 63 S Ct 608,613,  
2 87 L ed 819 (1943).)"

3 The opinion continues on the note that the United  
4 States Supreme Court has as yet declined "to reassess the  
5 doctrine of entrapment" the reason given, in numerous  
6 cases, that to do so "would be to decide the case on  
7 grounds \* \* \* not raised here or below by the parties  
8 before us."

9 The Ninth Circuit opinion in ROBINSON then states  
10 at page 347:

11 "If the question were RES INTEGRA here, we  
12 would readily certify to the Court (see  
13 28 USC #1254(3)) the question whether the  
14 issue of entrapment should not always be  
15 decided by the court and never submitted  
16 to the jury."

17 Chief Justice Warren's opinion in SHERMAN (supra)  
18 and the companion case of

19 MASCHIALE V. UNITED STATES, 356 US 386,  
20 2 L ed 2d 859, 78 S Ct 827

21 (both cases decided May 19, 1958) stated that the Court  
22 declined to consider the question, not raised by the  
23 parties, whether factual issues of entrapment are deter-  
24 minable by the judge or the jury.

25 In concurring in the result, Justice Frankfurter,  
26 with the concurrence of DOUGLAS, HARLAN AND BRENNAN, JJ.,



1 expressed the view that, as regards entrapment, the crucial  
2 question is whether the police conduct revealed in a parti-  
3 cular case falls below standards, to which common feelings  
4 respond, for the proper use of government power, and that  
5 this is a question appropriate for the court and not for  
6 the jury.

7 As stated in

8 WHITING V. UNITED STATES, Calst, 1963

9 321 F.2d 72 at 77 n.12

10 "Liberty is too priceless to be made so  
11 significantly dependent upon a jury's  
12 ability to interpret fine distinctions  
13 and to apply different measures or standards  
14 as to the burden of proof in a criminal  
15 case."

16 Appellant contends it was error to submit to the  
17 jury the question of whether the police conduct fell below  
18 standards and thus was an improper use of government power.  
19 It is the province of the court, and of the court alone,  
20 to protect itself and the government from such prostitu-  
21 tion of the criminal law.

22 Therefore, the appellant contends that he has been  
23 deprived of his liberty without due process of law as  
24 guaranteed to him under the Fifth Amendment to the Consti-  
25 tution of the United States.



1 The matter is now RES INTEGRA, and should be given  
2 a definite standard by this Ninth Circuit Court, or should  
3 be certified to the United States Supreme Court under  
4 Title 28 Section 1254(3), as suggested by this Honorable  
5 Court in

6 ROBISON V. UNITED STATES, CA9th, 1967  
7 379 F.2c 338, 347.

8 - - - - -

9 ARGUMENT

10 IV

11 THE UNREASONABLE DELAY BETWEEN THE OFFENSE  
12 AND THE ARREST PREJUDICED APPELLANT'S ABILI-  
13 TY TO DEFEND HIMSELF AND WAS A VIOLATION OF  
14 DUE PROCESS THUS VIOLATING RIGHTS GUARANTEED  
15 BY THE FIFTH AMENDMENT TO THE CONSTITUTION  
16 OF THE UNITED STATES.

17 - - - - -

18 Rule 48(b), Federal Rules of Criminal Procedure,  
19 states in pertinent part:

20 "If there is unnecessary delay in PRESENT-  
21 ING THE CHARGE TO A GRAND JURY ... the  
22 court may dismiss the indictment." (Emphasis ours)

23 Although the United States Supreme Court and many  
24 of the Circuit Courts have not ruled precisely on the  
25 point in issue, there is a consistency stated by most of  
26 the courts that a delay in apprising appellant of the  
charge against him and the prejudicial effect of that  
delay on his ability to defend himself may constitute



1 a denial of due process under the Fifth Amendment.

2 ROSS V. UNITED STATES, CDC, 1965

3 349 F.2d 210

4 established a rule of fairness designed to protect innocent  
5 people from conviction made possible by the delay attendant  
6 on undercover police investigation. And in

7 WOODY V. UNITED STATES, CDC, 1966

8 370 F.2d 214

9 the court delineated the Ross rule with these words:

10 "The ultimate prejudice to the accused,  
11 the risk that he will be convicted although  
12 innocent, is not reflected in the evidence  
13 presented at trial. But it nevertheless  
14 exists if the accused has been unable to  
15 prepare a defense because of the delay  
16 before arrest."

17 In the ROSS case, the delay was 7 months; in  
18 the WOODY case, the delay was 4 months. The court held  
19 in WOODY that

20 "While mere delay of four months between  
21 alleged purchase of narcotics by under-  
22 cover officer and arrest was not so un-  
23 reasonable as to warrant reversal in absence  
24 of special circumstances, under the circum-  
25 stances surrounding accused's prosecution,  
26 the delay was prejudicial and warranted  
reversal of his conviction."



1 In WOODY, as in appellant's case at bar, there was  
2 an instance of potential prejudice which went well beyond  
3 the usual protestation of inability to remember (as in  
4 the ROSS case). The court, referring to the unavailability  
5 of a key defense witness, commented:

6 "It is the kind of circumstance which  
7 would warrant an inquiry into prejudice in  
8 a case despite the fact that the delay did  
9 not exceed four months."

10 The transaction for which appellant was indicted  
11 occurred on June 28, 1967, but he was not arrested until  
12 September 13, 1967, roughly three months later.

13 Reference is made at various points by both of the  
14 Agents in the Transcript of Testimony to a "young male  
15 Negro" who was present during the June 28th transaction.

16 The Agent's report (attached hereto as EXHIBIT TWO)  
17 written July 3, 1967, states in paragraph 13, page 3, that  
18 this Young Male Negro "has not yet been identified". This  
19 is the same report, and the ONLY report, defense counsel  
20 was allowed to see, and then only just before trial.  
21 This is the same report that has most of the first and  
22 second lines heavily inked out. The inked-out lines re-  
23 vealed during trial that the name of the informer, was Craig  
24 Lasha, and that it was Lasha who took Agent Knapp to ap-  
25 pellant's residence on June 10th.

26 Obviously this Young Male Negro (Mister X) was



1 of vital importance to the appellant's case. The trial  
2 testimony of Agents Knapp and Henry revealed that Mister X  
3 had been identified, after the report was written, but not  
4 by them. As far as this trial record is concerned, the  
5 name of Mister X has never been revealed to appellant, nor  
6 has it been revealed in any manner which would have given  
7 the appellant access to the information.

8 Further, the almost complete disinterest by the  
9 Agents in this most vital witness to appellant indicates  
10 further that the appellant was not only entrapped, but  
11 was denied the opportunity to contact this valuable witness  
12 by the pre-arrest delay of three months.

13 Had appellant known he would have to account for  
14 his actions on June 28th, he might have been able to locate  
15 Mister X. However, upon arrest three months later, and  
16 ever since, appellant has made every possible effort to  
17 trace him, but to no avail.

18 The Government saw fit to allow into testimony  
19 ONLY the fact that the car driven by the "Young Male  
20 Negro" belonged to a female individual, named in the  
21 Agent's report.

22 It is to be further noted that Agent Henry cor-  
23 roborated only ACTIONS. He was not present during any  
24 CONVERSATIONS between Agent Knapp and the appellant,  
25 and/or the Young Male Negro. And, most notably, Agent  
26 Henry was not present during any conversations at the



1 "initial" contact on June 10th.

2 The appellant did not take the witness stand, since  
3 any possibility of corroboration was denied him when he  
4 was unable to find any trace of his only eye-witness, his  
5 only "ear-witness".

6 Although it cannot be stated that the Young Male  
7 Negro WOULD have established a defense for appellant,  
8 nevertheless it can be said that he MIGHT have. For  
9 example, he MIGHT have testified that the Agent insisted  
10 on handing the money to appellant, even though appellant  
11 simply handed the money to Mister X who MIGHT have been  
12 standing beside appellant.

13 Mister X MIGHT have testified that he personally  
14 handed the Marihuana DIRECTLY to Agent Knapp and that  
15 appellant never touched it; and that it was he, the Young  
16 Male Negro, who had no written order form nor requested  
17 one from the Agent.

18 This Young Male Negro MIGHT have testified that  
19 appellant participated strictly as a favor to a friend  
20 ( Agent Knapp ) and received absolutely NO MONEY for  
21 his courteous efforts.

22 Thus, the special circumstance here, which places  
23 appellant under the ROSS and WOODY rulings, was the un-  
24 availability of the key witness, the Young Male Negro,  
25 since he was the ONLY person who could have impeached the  
26 testimony of Agents Knapp and Henry.



1 Although dissenting from the majority opinion in  
2 WOODY V. UNITED STATES, supra, Circuit Judge Burger never-  
3 theless points out:

4 "No matter how short the period of neces-  
5 sary and purposeful delay, a defendant may  
6 prevail if he can show sufficient prejudice."

7 Chief Judge Bazelon, in the majority opinion in  
8 WOODY, succinctly stated the basis for his concern:

9 "Delays prior to arrest which hinder  
10 or prevent presentation of a defense  
11 shackle our system of determining truth  
12 through the adversary process."

13 Appellant was thus so prejudiced by the pre-arrest  
14 delay as to be unable to defend himself and was denied  
15 due process under the Fifth Amendment to the Constitution  
16 of the United States.

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1 CONCLUSION

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3 By reason of appellant's assertion of his privilege  
4 against self-incrimination which precludes his criminal  
5 conviction premised on a failure to comply with the re-  
6 quirements of the Marihuana Tax System, the conviction  
7 and judgment appealed from should be reversed and remanded  
8 to the United States District Court for the Central District  
9 of California with directions to quash the indictment and  
10 discharge the defendant.

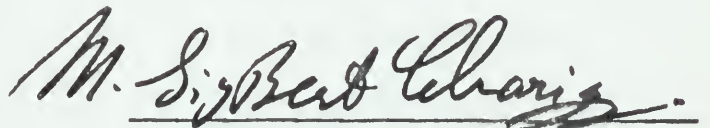
11  
12 By reason of the contravention of public policy  
13 inherent in a conviction obtained by impermissible entrap-  
14 ment, thus violating the Due Process Clause of the Fifth  
15 Amendment to the Constitution of the United States, the  
16 conviction and judgment appealed from should be reversed  
17 and the case remanded to the United States District Court  
18 for the Central District of California with directions to  
19 dismiss the indictment against the defendant.

20 By reason of the misleading instructions given  
21 by the trial court to the jury, and by reason of the sub-  
22 mission to the jury of a matter purely within the province  
23 of the court, thus depriving the appellant of his liberty  
24 and denying him due process of law under the Fifth Amend-  
25 ment, he is entitled to a new trial free from such error.  
26



1 By reason of the unreasonable delay between  
2 the offense and the arrest which prejudiced appellant's  
3 ability to defend himself, thus creating a violation of  
4 due process as guaranteed by the Fifth Amendment, the  
5 conviction and judgment appealed from should be reversed  
6 and the case remanded to the United States District Court  
7 for the Central District of California with directions  
8 to dismiss the indictment against the appellant.  
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13 Respectfully submitted,

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16 M. SIGBERT CHARIG  
17 ATTORNEY FOR APPELLANT  
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M. Sigbert Charig  
M. SIGBERT CHARIG  
ATTORNEY FOR APPELLANT

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M. Sigbert Charig  
M. SIGBERT CHARIG  
ATTORNEY FOR APPELLANT



EXHIBITS

EXHIBIT ONE:

Letter from United States Treasury Department,  
Internal Revenue Service, dated October 16,  
1967, consisting of one page.

EXHIBIT TWO:

Report of United States Treasury Agent,  
Roger Knapp, Federal Bureau of Narcotics,  
dated July 3, 1967, consisting of three pages.

...

...

...



INTERNAL REVENUE SERVICE

DISTRICT DIRECTOR  
LOS ANGELES, CALIFORNIA 90012

October 16, 1967

IN REPLY REFER TO  
1112:688-  
DB:1210

Mr. Dannis Frazier  
6615 Farmdale St.  
North Hollywood, Calif.

EXHIBIT ONE

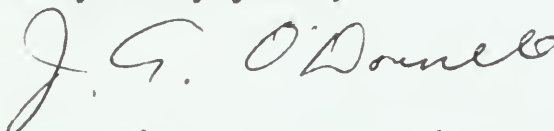
Dear Mr. Frazier:

This office is in receipt of a report from the Bureau of Narcotics relative to your violation of the Marihuana Tax Act.

Since the records indicate that you are not registered under the Marihuana Tax Act, it is requested that you forward to this office, within the next five days, the order form required by the Act.

In the event you are unable to produce the order form, you are liable for the Special Tax, Penalty, and Transfer Tax, and a bill will be sent to you for such amounts.

Very truly yours,



Supervisor, Correspondence Unit

EXHIBIT ONE



FILE NO. CAL-8-150-X		DISTRICT NO. 21	
GEN. FILE TITLE:			
MADE	RELATED FILES	OTHER OFFICERS	
Los Angeles, Calif. July 3, 1967 Roger D. Knapp Narcotic Agent		Narcotic Agents: Cesar V. Saliz Antonio A. Calaya Huberto T. Moreno Charles L. Henry	
T OF THIS MEMORANDUM		RECOMMENDATION	
Purchase of Ex. #1, 1025.700 grams of marijuana, from FRAZIER, at \$1 for \$520.00 CAY by Agt. Knapp on 6/28/67 at Los Angeles, Calif.		PENDING: CLOSE: FURTHER INVESTIGATION: <u>YES</u>	
s (if report is over two pages in length summarize in first paragraph)			
1. On June 10, 1967, <del>_____</del> <del>_____</del> The agent and FRAZIER talked about future narcotic purchases and FRAZIER then gave the agent his phone number. On June 26, 1967, Agent Knapp telephoned FRAZIER at 764-2716, a non-published number listed to FRAZIER at 6615 Fairdale St., North Hollywood, Calif. Arrangements were made for Agent Knapp to purchase 5 kilograms of marijuana from FRAZIER on June 28, 1967.			
2. On June 28, 1967, Agent Knapp telephoned FRAZIER at the above number. FRAZIER said that the marijuana was ready. The agent and the defendant agreed to meet for the purchase about 8:00 PM on this date at the defendant's residence.			
3. About 8:00 PM on June 28, 1967, Agent Knapp, under the surveillance of Agents Saliz, Calaya, Moreno, and Henry, drove government vehicle H-2970 to FRAZIER's residence and parked. As the agent parked, the defendant, who was standing in his front yard near the street, approached the car. The defendant and the undercover agent had a brief conversation about the quantity and the quality of the marijuana and also on the procedure of the transaction.			
4. After a few minutes of conversation, the agent got out of the car and both he and the defendant went into the defendant's house. The conversation continued in the house until about 8:30 PM. At this time, the defendant and the agent entered the defendant's 1962 Chevrolet Nova, California license 1B0-613, which was parked on the driveway next to the house.			
5. The agent and the defendant, with FRAZIER driving, proceeded to the intersection of Graham and Duckweiller Streets in Los Angeles where they parked on the northwest corner at about 9:15 PM. Enroute to this location, the agent and the defendant discussed the possibility for sale of larger amounts of marijuana. The defendant said that he knew many people who could supply smaller amounts. He did say, however, that the person from whom he was getting the agent's five kilograms, could supply 30 kilo-			
OF THIS MEMO FURNISHED TO		SIGNATURES	
EAU: EXHIBIT TWO		Roger D. Knapp (NARCOTIC AGENT)	
RICT NO: 14(SF) 2cc		Approved: Dick (DISTRICT SUPERVISOR)	



Memo re purchase of Exhibit #1 from Dennis FRAZIER.

grams without any difficulty.

6. After parking at the above mentioned intersection, FRAZIER got out of his car and walked north on Cochran Street and disappeared from view. A few minutes later he returned to his car. He told the agent that the source of supply didn't want to meet the agent because he was white. He further said that the source of supply had arranged for another person to handle the transaction and that this person wanted the money before he would get the marijuana. ms  
✓

7. The agent told FRAZIER that he <sup>agent</sup> didn't want to meet the source of supply's helper. It was then agreed that FRAZIER would go with the other person to get the marijuana. The agent gave \$20.00 advance funds to FRAZIER who, in turn, got into a 1963 Chevrolet Corvair, California license HSK-627, which was parked immediately in front of FRAZIER'S car. During the above conversation, a young negro male had entered the above mentioned Chevrolet.

8. As the agent waited in FRAZIER'S car, FRAZIER and the unidentified negro male drove east on Buckweller Street and disappeared from view. About 10:00 PM, FRAZIER and the other negro male returned in the Chevrolet and parked in front of FRAZIER'S car. FRAZIER got out of the car with a large shopping bag, which he put in the back seat of his car. At this time, the unidentified negro male, who was driving the Chevrolet, got out of the car, walked north on Cochran Street and disappeared from view.

9. After FRAZIER put the shopping bag in his car, he got in and then he and the agent drove in a round about route back to FRAZIER'S residence. Enroute to FRAZIER'S residence, FRAZIER and the agent talked about various other illicit means of making money. The defendant then said that he was making good money on the sale of tires. On further inquiry, he said he was a government employee and had access to new government owned tires. He said he was selling sets of new four-ply firestone tires, which retailed for about \$39.00 each, for \$20.00 per tire.

10. The undercover agent said he was interested in buying new tires. FRAZIER said that he would get the agent any type that he wanted. He said, however, that he was temporarily out of business as they had a new manager who was keeping a close check on supplies. He further said that he could get the tires in a month or so when the situation was more favorable.



AL-8-150-M  
Exhibit #1  
July 3, 1967

Memo re purchase of Exhibit #1 from Dennis FRAZIER, et al.

1. About 10:30 PM, FRAZIER and the undercover agent arrived at the defendant's house and parked in the driveway. More conversation ensued during which FRAZIER said he thought tonight's source of supply could supply the 30 kilograms of marijuana for about \$45.00 per kilogram. FRAZIER then made a telephone call. On completion of the phone call, he said he had just called the source of supply about the 30 kilograms and the source of supply would call him back later. A few minutes later, the agent returned to his car and then left the area. *He took marijuana out of car.*

2. Exhibit #1, 1025.700 grams of marijuana, was contained in five bricks wrapped in wrapping paper (3-blue, 1-red, and 1-yellow) and further wrapped in clear cellophane. The exhibit was further contained in a Britt shopping bag. This exhibit was stored and on June 29, 1967, it was weighed and sealed by Agent Knapp, as witnessed by Agent Henry, and then hand carried to the Los Angeles Sheriff's Crime Laboratory for analysis.

### 3. DESCRIPTION OF DEFENDENTS:

Dennis FRAZIER & James FRAZIER is a negro male, born June 12, 1942 in Ohio. He is 6'0" tall, weighs 225 pounds, and has black hair, brown eyes, heavy build, and a dark complexion. He has a 1" scar on his forehead and is now wearing a narrow beard. At the time of the purchase, he was wearing a dark T-shirt and old dark colored trousers. He lives at 6615 Harndale Street, North Hollywood, California with his wife ERMA. He can be further identified by: Los Angeles PD #572811-F, SS #557-60-7811, and Calif. DL #K-359783.

The driver of the defendant 1963 Chevrolet Corvair, California license HSK-687, has not yet been identified. He is a negro male, about 5'7" tall, weight about 155 to 160 pounds, with short black hair. At the time of the purchase, he was wearing a light colored pull-over shirt and dark trousers.

### 4. DESCRIPTION OF VEHICLES:

1962 Chevrolet Nova, California license IBD-613, is registered to Erma Andria FRAZIER at 12016 Grosont, San Fernando, Calif. It is a white, hardtop, 2-door, coup.

1963 Chevrolet Corvair, California license HSK-687, is registered to Cynthia Hefner at 1521 E. Greenercy, Los Angeles, Calif. It is a blue, 2-door, coup.



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APPENDIX



TITLE 26  
UNITED STATES CODE

PART II---MARIHUANA

Subpart A--Tax on Transfers  
(Sections 4741 through 4746)

#4741. IMPOSITION OF TAX

(a) Rate...There shall be imposed upon all transfers of marihuana which are required by section 4742 to be carried out in pursuance of written order forms taxes at the following rates:

(1) Transfers to special taxpayers.--Upon each transfer to any person who has paid the special tax and registered under #s4751-4753...\$1 per oz. or marihuana or fraction thereof.

(2) Transfers to others.--Upon each transfer to any person who has not paid the special tax and registered under #s4751 to 4753...\$100 per oz...

(b) By Whom Paid...Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of #4742 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

#4742. ORDER FORMS

(a) General Requirement...It shall be unlawful for any person WHETHER OR NOT required to pay a special tax and register under #s4751 to 4753...to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate.

(b) Exceptions (not applicable)

(c) SUPPLY...The Secretary or his delegate shall cause suitable forms to be prepared for the purposes mentioned in this section and shall cause them to be distributed to each internal revenue district for sale. The price at which such forms shall be sold shall be fixed by the Secretary...but shall not exceed 2 cents each. Whenever any of such forms are sold, the Secretary...shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same.

(d) PRESERVATION. Each such order form sold by the Secretary...shall be prepared to include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by



1 such person for a period of 2 years so as to be readily ac-  
2 cessible for inspection by an officer or employee mentioned  
3 in Section 4773. The copy given to the purchaser shall be  
4 retained by the purchaser and preserved for a period of 2  
5 years so as to be readily accessible to inspection by any  
6 officer or employee mentioned in section 4773. The second  
7 copy shall be preserved in the records of the internal  
8 revenue district.

9 #4743. AFFIXING OF STAMPS.

10 #4744. UNLAWFUL POSSESSION.

11 (a) Persons in general...It shall be unlawful for any person  
12 who is a transferee required to pay the transfer tax im-  
13 posed by #4741(a)..(1) to acquire or otherwise obtain any  
14 marihuana without having paid such tax, or (2) to transport  
15 or conceal, or in any manner facilitate the transportation  
16 or concealment of, any marihuana so acquired or obtained.  
17 Proof that any person shall have had in his possession any  
18 marihuana and shall have failed, after reasonable notice and  
19 demand by the Secretary or his delegate, to produce the order  
20 form required by #4742 to be retained by him shall be pre-  
21 sumptive evidence of guilt under this subsection and of li-  
22 ability for the tax imposed by #4741(a).

23 #4745. FORFEITURES.

24 #4746. CROSS REFERENCES: For penalties and other general  
25 and administrative provisions applicable to this subpart,  
26 see #s 4761-2; #s 4771 to 4776, inclusive, and subtitle F.

27 SUBPART B...OCCUPATIONAL TAX

28 #4751...Imposition of tax.

29 #4752...Computation and liability for tax.

30 #4753...Registration.

31 #4754...Returns.

32 #4755...Unlawful acts in case of failure to register and pay  
33 special tax.

34 #4756...Other laws applicable.

35 #4757...Cross references.

36 SUBPART C...GENERAL PROVISIONS

37 #4761...Definitions.

38 #4762...Administration in insular possession.

39 PART III...MISCELLANEOUS PROVISIONS  
40 RELATION TO NARCOTIC DRUGS AND  
41 MARIHUANA

42 #4771...Stamps

43 #4772...Exemption from tax and registration.



1 #4773. INSPECTION OF RETURNS, ORDER FORMS, AND PRESCRIPTIONS.  
2 The duplicate order forms and the prescriptions, including  
3 the written record of oral prescriptions, required to be  
4 preserved under the provisions of #4705(c) (2) and (e), and  
5 the order forms and copies thereof and the prescriptions and  
6 records required to be preserved under the provisions of  
7 section 4742, in addition to the statement or returns filed  
8 in the office of the official in charge of the internal  
9 revenue district under the provisions of #s4732(b) or 4754,  
10 shall be open to inspection by officers and employees of the  
11 Treasury Department duly authorized for that purpose, and  
12 such officials of any State or Territory, or of any organized  
13 municipality therein, or of the District of Columbia, or any  
14 insular possession of the United States, as shall be charged  
15 with the enforcement of any law or municipal ordinance regu-  
lating the production of marihuana or regulating, the sale,  
prescribing, dispensing, dealing in, or distribution of  
narcotic drugs or marihuana. The Secretary or his delegate  
is authorized to furnish, upon written request, certified  
copies of any of the said statements or returns filed in the  
office of any official in charge of an internal revenue  
district to any of such officials of any State or Territory  
or organized municipality therein, or the District of Col-  
umbia, or any insular possession of the United States as  
shall be entitled to inspect the said statements or returns  
filed in the office of the official in charge of the inter-  
nal revenue district, upon the payment of a fee of \$1 for  
each 100 words or fraction thereof in the copy or copies so  
requested.

16 #4774. Territorial extent of law.

17 #4775. List of special taxpayers.

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19 FEDERAL TAX REGULATIONS 1968

20 Subpart D--Transfer Taxes

21 #152.66 WRITTEN ORDER REQUIRED FOR TRANSFER OF MARIHUANA.  
22 Except as otherwise provided, every person seeking to obtain  
23 marihuana shall make application on Form 679a(Marihuana) to  
24 the district director of internal revenue for the district  
25 in which the transferee is located for the purchase of an  
26 order form. The application shall show (a) the transferee's  
name, address, and, if registered, the registration number,  
(b) the name and address of the transferor, and (c) a des-  
cription, including quantities, of the desired articles or  
materials to be transferred. The application must be ac-  
companied by a check, cash, or money order in payment of the  
transfer tax..plus 2 cents in payment for the order form.



1 #152.69 PROCEDURE REGARDING ORDER FORMS

2 Upon receipt of a properly executed application, accompanied  
3 by a sum sufficient to cover the transfer tax and the price  
4 of the order form, the district director will issue the order  
5 form in triplicate. There shall be shown on each of the  
6 three copies the date of issuance, the name and address of  
7 the proposed transferor, the name and address of the trans-  
8 feree, and a description, including quantities, of the desired  
9 articles or materials. As to affixing of the tax stamp to  
10 the original order form, see #152.64. The duplicate and  
triplicate shall show the date the stamp was purchased and  
canceled. The original and duplicate shall be delivered  
to the transferee, who shall in turn submit the original to  
the transferor. The triplicate shall be retained by the  
district director. The transferor shall preserve the origi-  
nal, and the transferee shall preserve the duplicate, for  
a period of 2 years so as to be readily accessible for  
inspection by any officer, agent, or employee mentioned in  
section 4773.

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